PRIVY COUNCIL REPORTS

SYED OMAR BIN ABDUL RAHMAN TAHA ALSAGOFF & ANOR. v. THE GOVERNMENT OF THE STATE OF JOHORE

[P.C. (Lord Diplock, Viscount Dilhorne, Lord Fraser of Tullybelton, Lord Keith of Kinkel and Sir Robin Cooke) June 12 and July 18, 1978]

[Privy Council Appeal No. 44 of 1975]

Land Law — Land Acquisition — Whether acquisition proceedings null and void — Purposes for which land needed — Declaration conclusive evidence that land needed for purpose specified therein — Interpretation and General Clauses Ordinance 1948, s. 30 — Land Acquisition Act, 1960, ss. 3, 7 and 8.

This was an appeal against the judgment of the Federal Court ([1975] 1 M.L.J. 241) confirming an order of the High Court which had dismissed the appellant's application for a declaration that the acquisition proceedings in respect of their lands were illegal and therefore null and void.

Held, dismissing the appeal: section 8(3) of the Land Acquisition Act 1960 provides that the declaration issued under the section shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein. While it may be possible to treat a declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers or that the purpose stated in the declaration does not come within section 3 of the Act, in the absence of bad faith, which in the instant case was negatived by concurrent findings of fact in the courts below, the subsection renders it not possible to challenge its validity by asserting that some of the land to which it relates is not needed for the purposes stated or that the land is in fact wanted for purposes other than those specified.

Case referred to:-

(1) *Anisminic* v. *Foreign Compensation Commission* [1969] 2 A.C. 147.

PRIVY COUNCIL APPEAL FROM MALAYSIA.

Lionel Read Q.C. (*Howard Page* with him) for the appellants.

Nigel Hague (*Judith Jackson* with him) for the respondents.

Cur. Adv. Vult.

Viscount Dilhorne (delivering the judgment of the Board): By virtue of the Land Acquisition Act, 1960, as amended by the Land Acquisition (Amendment) Act, 1973, the Ruler of the State of Johore

"may acquire any land which is needed —

(a) for any public purpose; or

(b) by any person or corporation undertaking a work which in the opinion of the State Authority is of public utility; or

(c) for the purpose of mining or for residential, agricultural, commercial or industrial purposes," (section 3).

That Act requires the State Authority, in this case the Ruler of Johore, when satisfied that any land in any locality in the State is likely to be needed for any of these purposes, to give notice of the lands likely to be needed and of the purpose for which they may be needed (section 4); and when lands are needed for any of those purposes, the Collector is required to prepare and submit to the State Authority

"a plan of the whole area of such lands, showing the particular lands, or parts thereof, which it will be necessary to acquire; and"

a list of such lands in a prescribed form (section 7).

The plan the Collector is required to prepare is not a plan of the proposed lay-out of the area to be acquired showing for what purpose or purposes each piece of land is to be used but a plan showing the area.

On April 2, 1970 the State Development Officer of Johore wrote to the State Planning Officer asking him to prepare a draft lay-out for the development of harbour and industrial sites on the land to be acquired in the Pasir Gudang area as shown on a plan bounded by a red line. That plan has not been produced in the course of this litigation. The State Planning Officer was told that the requirements to which attention should be given were

"(1) One Harbour site of 300 acres
(2) One Heavy Industrial site of 400 acres
(3) One Medium Industrial site of 800 acres
(4) One Light Industrial site of 300 acres, and
(5) One residential town of 200 acres. This site is for the accommodation of between 10,000-12,000 people."

On June 6, 1970 the State Planning Officer sent to the State Development Officer a plan marked J7/3872 of a lay-out, not for 2,000 acres, the total area of the requirements stated above, but covering an area of some 5,700 acres.

In the plan J7/3872 the area in which lay the appellants' lands was allocated for "Kegunaan Khas" (Special Purposes) and the Planning Officer's report stated that this area had been zoned "for special purposes which includes recreation such as beaches for swimming, boating, picnic areas, camping sites, hotels, chalets and shops". The layout proposed in this plan was not accepted by the State Authority and at a later date a revised plan J7/3872/2 in which the area was zoned for industrial purposes was submitted to the State Development Officer. In 1967 the first appellant had begun the development of some of his land in this area as a beach and holiday resort and by June 1972 he had completed a considerable complex including chalets and a restaurant.

Section 8 of the Land Acquisition Act reads as follows:—

"8. (1) When the State Authority decides that any of the lands referred to in section 7 are needed for any of the purposes referred to in section 3, a declaration in Form D shall be published in the *Gazette*.

(2) A copy of the list of lands referred to in paragraph (b) of section 7, amended, if necessary, in accordance with the decision of the State Authority, shall be included as a schedule to the declaration in Form D.

(3) A declaration in Form D shall be conclusive evidence that all the scheduled land referred to therein is needed for the purpose specified therein."

Pursuant to this section, a Declaration in the prescribed form was published in the *Gazette*. It read as follows: —

"LAND ACQUISITION ACT 1960
FORM D
DECLARATION OF INTENDED ACQUISITION
(SECTION 8)

It is hereby declared that particular lands and areas specified in the Schedule hereto are needed for the following purpose:

Construction of Port, Residential and Industrial

2. A plan of the particular lands and areas so specified may be inspected during the normal hours of business in the Land

Office of the District in which such lands and areas are situated.

Dated this 18th day of January, 1971

COMMISSIONER"

The plan deposited at the Land Office was a copy of the lay-out plan J7/3872.

After the making of this Declaration, the steps required by the Act to be taken for the acquisition of the lands were taken. On April 20, 1972 the Commissioner issued a certificate of urgency under section 19 of the Act which stated that the land was urgently required for use for a public purpose and directed the Collector to take possession of it. On April 22, 1972 the Collector in accordance with section 22 notified the appellants that he had done so.

On June 4, 1972 the appellants gave notice of a motion for a declaration that the proceedings for the acquisition of their lands by the Government of the State of Johore were illegal and so null and void. The motion was heard and dismissed by Syed Othman J. and the appellants' appeal from his decision was dismissed by the Federal Court on January 16, 1975.

The appellants in this appeal contended that the proceedings were null and void as they say their lands were acquired for purposes other than those for which the respondent was empowered by the Act to acquire them. This contention is based on the fact that the draft lay-out plan J7/3872 deposited at the Land Office showed that their lands were zoned for special purposes which included recreation. The special purposes, it was said, were not purposes which came within section 3 of the Act or the purposes stated in the Declaration of Intended Acquisition.

Paragraph 1 of that Declaration is, as Syed Othman J. held, "the material or substantive part of the declaration", a conclusion with which the Federal Court agreed and with which their Lordships agree. The Schedule attached to the Declaration lists the lands to be acquired and the paragraph states the purposes of the acquisition. The plan referred to in paragraph 2 has to be a plan of the lands and areas so specified. The Act imposes no obligation on the acquiring authority to produce a plan for inspection which shows how the land to be acquired is to be zoned. Such evidence as there was was to the effect that the zoning of the area which included the appellants' lands for special purposes in this draft lay-out plan prepared by the Planning Officer was never accepted and approved by the State Authority; but even if it had been, that would not, in their Lordships' view, suffice to show that the purpose of the acquisition fell outside section 3 or paragraph 1 of the Declaration for where, as in the instant case, a new town is to be created, the provision of space for recreation may be regarded as incidental to zoning for residential use. The Interpretation and General Clauses Ordinance, 1948, section 30, provides that

"Where a written law confers power on any person to do ... any act or thing, all such powers shall be understood to be also conferred as are reasonably necessary to enable the person to do ... the act or thing."

In the event, however, the appellants' lands have actually been used as part of a shipyard.

Section 8(3), as has been said, provides that the Declaration shall be conclusive evidence that all the scheduled land is needed for the purpose specified therein. While it may be possible to treat a Declaration made pursuant to this subsection as a nullity if it be shown that the acquiring authority has misconstrued its statutory powers (see *Anisminic* v. *Foreign Compensation Commission*[1]) or that the purpose stated in the Declaration does not come within section 3, in the absence of bad faith, which in the instant case is negatived by concurrent findings of fact in the courts below, this subsection renders it not possible to challenge its validity by asserting that some of the land to which it relates is not needed for the purposes stated or that the land is in fact wanted for purposes other than those specified. Consequently the fact that the lands listed in the Schedule amounted to some 5,700 acres when the total area of the State Development Officer's original requirements was 2,000 acres does not help the appellants, nor can it really be contended that the purposes stated in the Declaration do not come within section 3.

In their Lordships' opinion the Federal Court and Syed Othman J. came to the right conclusion and they will advise His Majesty the Yang di-Pertuan Agong that this appeal should be dismissed with costs.

Appeal dismissed.

Solicitors: *Linklatters & Paines; Stephenson Harwood.*

TEH CHENG POH v. PUBLIC PROSECUTOR

[Privy Council (Lord Diplock, Lord Simon of Glaisdale, Lord Salmon, Lord Edmund-Davies and Lord Keith of Kinkel) October 23 and December 11, 1978]

[Privy Council Appeal No. 15 of 1978]

Criminal Law and Procedure — Possession of revolver and ammunition — Charges under Internal Security Act, 1960 — Trial under Essential (Security Cases) (Amendment) Regulations, 1975 — Whether Yang di-Pertuan Agong has power to make regulations when Parliament is sitting — Regulations, ultra vires the Federal Constitution — Proclamation of Yang di-Pertuan Agong proclaiming security area — Whether valid — Power of Attorney-General to decide to prosecute under Internal Security Act, 1960 — Internal Security Act, 1960, ss. 47, 57 — Emergency (Essential Powers) Ordinance, 1969, s. 2 — Federal Constitution, arts. 8(1), 32(1), 145(3), 149 and 150.

Constitutional Law — Power of Yang di-Pertuan Agong to make regulations after Parliament has sat — Power of Attorney-General to decide to prosecute under Internal Security Act, 1960 — Whether Essential (Security Cases) (Amendment) Regulations, 1975 ultra vires the Constitution — Federal Constitution, arts. 8(1), 32(1), 145(3), 149 and 150.

Interpretation of Statutes — Generalia specialibus non derogant.

In this case the appellant had been charged for possession in a security area of a revolver and ammunition under the Internal Security Act, 1960. The appellant was tried under the special procedure laid down by the Essential (Security Cases) (Amendment) Regulations, 1975 and found guilty and sentenced to death (see [1978] 1 M.L.J. 68). An appeal to the Federal Court was dismissed* and the appellant appealed. Before the Privy Council three questions of law were argued (1) the validity of the Essential (Security Cases) (Amendment) Regulations, 1975; (2) whether the Proclamation of the Yang di-Pertuan Agong on May 15, 1969 declaring Malaysia a security area was valid and (3) the

* [1977] 2 M.L.J. 66, 73.